

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

K. B.,

Claimant,

vs.

CENTRAL VALLEY REGIONAL
CENTER,

Service Agency.

OAH No. N2006010952

DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 9, 2006, in Fresno, California.

Claimant was present and was represented by her paternal aunt, Barbara Gross (Gross), a licensed registered nurse.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center, Inc. (CVRC).

Evidence was received, the record was closed, and the matter was submitted on March 9, 2006.

ISSUES

1. Did claimant's disability originate before she was 18 years old?
2. Does claimant have a disabling condition that either is closely related to mental retardation or requires treatment similar to that required for individuals with mental retardation?

FACTUAL FINDINGS

1. Claimant was born on January 20, 1971, and is now 35 years old. In July 2002, through genetic testing, claimant was diagnosed with Huntington's Disease, an "inherited progressive degenerative disease of cognition, emotion and movement."¹ The degeneration of the brain caused by the disease results in cognitive impairment (including loss of sensory-motor function, memory and judgment), emotional and behavioral disturbance, and loss of physical control. Both claimant's father and paternal grandmother had Huntington's Disease. Claimant's father died of the disease in 1992 at the age of 48.

2. In October 2005, claimant applied for services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. After conducting an intake assessment and eligibility team review, CVRC, on January 11, 2006, issued a Notice of Proposed Action, denying claimant's application on the grounds that she did not demonstrate that she had a developmental disability as defined in the Lanterman Act. Claimant appealed from that notice.

Claimant's History Before Age 18

3. Claimant's mother, Gross, and Crystal Rose (Rose), who is claimant's godmother and a licensed clinical social worker with a master's degree in social work, all described claimant as a gifted child in her early years. She attended elementary school in the Visalia Unified School District. On her "Record of Individual Growth in Kindergarten" for the 1976/1977 school year, her teacher checked the boxes indicating that she met all the emotional, intellectual and physical development items and all but one of the social development items.² In the "General Comments" section, the teacher wrote that claimant "has an inquisitive mind. She understands complex problems [and] thrives on a challenge. I would like to see her tested for the M.G.M. program." In the "Interests" section, the teacher wrote that claimant "has been tested [and] placed in the Mentally Gifted Program."

4. Claimant's mother asserted that claimant was always "quiet" and "clumsy." Starting when she was about nine or ten years old, claimant began experiencing periods of depression and could not concentrate as well at school. During this period, claimant's parents separated and her father's health continued to deteriorate.

5. Although claimant experienced bouts of depression, she performed well in elementary school and, initially, in junior high school. In the fifth grade, she received all A's in her academic subjects. In the sixth grade, she received A's and B's in her academic subjects. In the sixth grade, on the Stanford Achievement Test, she scored in the 95th to the 99th percentile in all subject areas, except Mathematics Application; in that subject area, she scored in the 85th percentile. In the seventh grade, she scored in 91st to 99th percentile in all

¹ Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), p. 165.

² The only social development item that was checked "no" was "is a leader."

subject areas except Mathematics Computation; in that subject area she scored in the 86th percentile.

6. Claimant's grades began to slip near the end of junior high school. In her last semester of seventh grade, she received C's in reading, European and Asian history, and English; she received an F in pre-algebra. In the ninth grade, she had a cumulative grade point average of 3.18; in the tenth grade, her cumulative grade point average was 2.92; in 11th grade, her cumulative grade point average was 2.88. Her class rank at the end of 11th grade was 218 in a class of 421 students. Although claimant's grades declined in high school, there was no evidence that she was ever evaluated for or placed in special education classes.

7. Claimant was almost the same age as Rose's daughter. The two girls were close friends from when they were about four years old until they were about 12. Rose saw claimant almost every day during this time period. When claimant was in elementary school, Rose considered her to be very bright, with a quick "off-the-wall" sense of humor and the ability to "argue like an adult." Although claimant was clumsy in the large muscle sense, she had good small muscle coordination and could do intricate art projects. She learned to ride a bicycle by age eight.

Rose and her family ceased living near claimant when she was about 12 years old. When claimant was about 14 years old, she spent the summer with Rose's family after her sophomore year in high school. Over this summer, Rose observed significant changes in claimant's behavior, abilities, personality and cognitive skills. Claimant "seemed like a different kid" to Rose. Claimant no longer rode a bicycle. She no longer did intricate art projects that required fine motor skills. She no longer initiated any activities, although she was still a willing participant in activities that others initiated. She was not comfortable socializing with children she did not know and clung to Rose's daughter. Although the changes that she observed were subtle, Rose felt that claimant had lost her "quick edge" and her abilities to be funny and connect with others.

Each time Rose saw claimant after she was 15 years old, Rose was increasingly concerned about claimant's inability to plan, organize or initiate any activities, although claimant was able to participate appropriately.

8. Gross observed a similar change in claimant around the time she began high school. Claimant began experiencing deficits in organizational skills and had difficulty comprehending pre-algebra. Although Gross's mother and brother had Huntington's Disease, Gross did not initially attribute claimant's deficits to the early onset of the disease.

9. David Roberts, M.D., who has been a board certified neurologist for over 20 years and has worked at the Porterville Developmental Center for approximately eight years, testified on behalf of claimant. Dr. Roberts took care of claimant's father when he had Huntington's Disease.

Dr. Roberts explained that Huntington's Disease has an autosomal dominant hereditary transmission. A child of a parent with Huntington's Disease has a 50 percent chance of inheriting the disease. There is a wide variability in the onset of symptoms for individuals who have inherited the disease. Generally, individuals begin exhibiting symptoms in their 20's, 30's and 40's; but there have been some individuals who have shown signs of the disease as early as four years old, while others do not show any symptoms until they are in their 60's.

The gene for Huntington's Disease is a CAG trinucleotide expanded sequence mapped to the short arm of chromosome four. The detection of less than 30 CAG trinucleotide repeats rules out the expression of the gene for the disease. The detection of 40 or more CAG repeats confirms the presence of the gene causing the disease. The greater the number of CAG repeats on an individual's gene, the greater the likelihood that the individual will begin showing symptoms earlier in life and that the symptoms will be more aggressive. There is also some research to indicate that individuals who inherit the disease from their fathers exhibit symptoms earlier than individuals who inherit the disease from their mothers.

10. When claimant was genetically tested in July 2002, she was found to have one normal Huntington's allele with 17 CAG repeats and one expanded allele with 51 CAG repeats.³ Dr. Roberts testified that, while some of claimant's emotional and cognitive problems in high school could be attributed to environmental factors, he believed that hereditary factors played a significant role. In high school, claimant had very specific attention problems, significant anxiety and serious depression, and was socially withdrawn. According to Dr. Roberts, these symptoms were not due to usual adolescent adjustment reaction; instead, they represented emotional dysregulation and probably attention deficit due to impaired brain function. It was Dr. Roberts's opinion that, given the large number of CAG trinucleotide repeats on claimant's gene, the fact that she inherited the disease from her father, and her very significant current impairments, the emotional and cognitive deficits that she experienced in her teens were, in all likelihood, signs of the early onset of Huntington's Disease.

11. Rebekah Kawashima, M.D., is a general pediatrician who contracts with CVRC to review eligibility cases. At CVRC's request, Dr. Kawashima reviewed claimant's medical records. According to these records, before claimant was 18 years old, she was attending high school full-time, planning to attend college, and capable of taking care of herself. Welfare and Institutions Code section 4512, subdivision (1), defines "substantial disability" to mean:

the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

³ The Merriam-Webster Online Dictionary defines "allele" to mean "any of the alternative forms of a gene that may occur at a given locus." ([http://www.m-w.com/dictionary/allele.](http://www.m-w.com/dictionary/allele))

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

From the information set forth in claimant's medical records, Dr. Kawashima determined that claimant was not substantially disabled before she was 18 years old.

Dr. Kawashima explained that she had never treated a patient with Huntington's Disease and was not an expert in the field. She did not examine claimant. She reviewed the websites of the National Institute of Health and the Mayo Clinic to obtain enough research to answer CVRC's questions about the disease. Dr. Kawashima admitted that she did not know whether the difficulties claimant began experiencing before she was 18 were due to the early onset of Huntington's Disease.

12. In sum, a gene claimant inherited from her father at conception predestined her to develop Huntington's Disease. Her emotional and cognitive difficulties when she was in high school may have been early indications that she had the disease. She was not, however, substantially disabled before she was 18 years old.

13. To be eligible for services under the Lanterman Act, an individual must have "a disability that originates before an individual attains age 18 years."⁴ In a document entitled "Recommendations for ARCA Directors and DDS," issued on May 17, 2004, the ARCA Physicians "recommended by a vote of 18 to 1, that a condition must be substantially handicapping prior to the age of 18, to be considered eligible for regional center services."⁵ Although there was no evidence presented to indicate that ARCA or the Department of Developmental Services ever adopted the ARCA Physicians' recommendation, CVRC followed this recommendation and determined that claimant was not eligible for services under the Lanterman Act because she was not substantially disabled before she was 18 years old. The appropriateness of CVRC's determination is discussed in the Legal Conclusions below.

⁴ Welfare and Institutions Code section 4512, subdivision (a). See also California Code of Regulations, title 17, section 54000, subdivision (b)(1), which provides that a developmental disability must "[o]riginate before age eighteen."

⁵ "ARCA" stands for "Association of Regional Center Agencies." The ARCA Physicians are a committee of regional center physicians who provide guidance to regional centers throughout the state.

Claimant's History After Age 18

14. After she completed high school at age 18, claimant tried to attend different community and junior colleges, but was unable to remain focused and organized enough to complete the coursework. On January 21, 2001, with the support of her mother and Gross, claimant was able to graduate from the Dental Assistant Program at San Joaquin Valley College with an Associate of Science Degree. Claimant was not able, however, to work as a dental assistant. She did work for periods of time as a clerk at Walgreens and Tower Records. She also lived independently in San Francisco for about five years.

15. Dr. Roberts first saw claimant about eight years ago when she was 27 years old. He observed physical symptoms that made him suspect that claimant had Huntington's Disease. Claimant showed signs of "conversion syndrome": she would convert an abnormal involuntary movement into a seemingly normal voluntary action. For example, if her arm involuntarily jerked upward, she would act as though she intended to raise her arm to fix her hair.

16. Claimant continued to have bouts of depression throughout her life. In 1995, she was admitted to St. Mary's Hospital for six days for depression. Claimant takes anti-depressants for this condition.

17. Claimant suffers from chorea, the involuntary abnormal movements associated with Huntington's Disease. Approximately two years ago, she was placed on tetrabenazine, an experimental drug to treat chorea. Claimant's chorea significantly decreased while she was taking the experimental medication. In July 2005, she was hospitalized under Welfare and Institutions Code section 5150, after trying to commit suicide. Because there was a concern that tetrabenazine increases the likelihood of depression and suicide, claimant was removed from the experimental study. Since claimant stopped taking the experimental medication, her chorea has increased.

Claimant's Current Status

18. Claimant asserts that she is eligible for Lanterman Act services under the "fifth category," which grants services to individuals who have "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."⁶ Claimant asserts both that she has a disabling condition

⁶ Welfare and Institution Code section 4512, subdivision (a). See also Code of California Regulations, title 17, section 54000, subdivision (a).

similar to mental retardation and that she requires treatment similar to that required by individuals with mental retardation.⁷

19. Claimant testified at hearing. Although her chorea made testifying physically difficult, she understood all the questions she was asked and responded thoughtfully, articulately, and coherently. Claimant currently lives at Hope Manor in Fresno and goes to the Fresno Adult Day Health Care facility during the day. She explained that, although there are some people her age at the day care facility, there is no one her age at Hope Manor; the person at Hope Manor closest to her age is 51 years old. She would like to obtain services from the regional center in order to keep her mother from working too hard. She described her past history of employment, occupational therapy and art classes. She started noticing the physical manifestations of her disease about three years ago. She described her memory as "bad."

20. On November 10, 2005, CVRC conducted an Intake Assessment of claimant. The assessment found that, with respect to motor functioning, claimant required some support while walking. She was, however, able to stand and walk short distances independently. At that time, she was waiting for a walker and a transfer bench for the bathtub. She was receiving physical therapy at the Fresno Adult Day Health Care facility. Claimant was able to feed herself and to carry a coffee cup during the assessment without spilling the coffee. She displayed difficulties with writing.

With respect to independent living skills, the assessment found that, until a few years ago, claimant could independently perform all daily living tasks and chores, including food preparation. As of the time of the assessment, however, her mother was doing all such tasks and chores for her. She required assistance in taking her medications. When toileting, she tried to be independent, but sometimes had difficulty with buttons and zippers. Her mother brushed her teeth and helped her clean her face. Claimant was able to brush her hair and wash her hands herself. She required assistance with bathing and washing her hair. She required help dressing and doing buttons and zippers. She was able to correctly identify coins and paper money by name and value. She was also able to provide simple and complex money amounts (\$2.52 and \$27.13).

With respect to social skills, the intake assessment found that, in the past, claimant was able to form and maintain friendships. At the time of the assessment, however, she was having difficulty making friends, although she interacted with other adults at the Fresno Adult Day Health Care facility. She enjoyed participating in social activities and displayed no unacceptable social behaviors.

⁷ In support of her position, claimant submitted a letter from Ralph Noa (Noa), a former employee of CVRC's Intake and Assessment Team in Visalia. According to Noa's letter, CVRC's Visalia office found that an adult female with Huntington's Disease was eligible for regional center services. Noa's letter states that that female either tested in the mild range for mental retardation or fell into the fifth category, he could not recall which. The general information provided by Noa about eligibility findings with respect to another client are not sufficiently detailed to provide relevant evidence on which a finding in this matter can be based.

In the emotional domain, the intake assessment found that claimant displayed no aggressive behaviors or temper tantrums. The assessment described her history of depression and the Welfare and Institutions Code section 5150 commitments she had in July 2005.

In the cognitive domain, the assessment described claimant as a "bright individual." She demonstrated that she was able to read a clock, and knew the date, her age, her birth date, her address, that she lived on the west coast, and that George Bush was president. She was also able to do most of the simple addition, subtraction and multiplication problems she was given.⁸ In the past, she loved to read, but at the time of the assessment, was unable to do so because she had difficulty concentrating. CVRC did not administer an IQ test.

In the communication domain, the assessment found that claimant was able to carry on a complex conversation, and that she had "excellent listening skills and communicate[d] well one on one." The assessment also found that, at times, it was hard for her to communicate and state words intelligibly "due to [her] Huntington's Disease."

Based upon the results of the intake assessment, CVRC's Eligibility Team concluded that claimant was not developmentally delayed.

21. On January 19 and 24 and February 16, 2006, Synchrony of Visalia, Inc. conducted a psychological assessment of claimant.⁹ Because claimant exhibited severe chorea, Synchrony did not administer any test that had to be timed or required fine motor control. Throughout the testing, claimant was cooperative, able to comprehend and respond to questions, and able to follow directions. But as demands on her cognitive abilities increased, her performance deteriorated. She appeared to have difficulty with short-term memory and required that complex questions be repeated and occasionally restated or rephrased to clarify the demand being placed on her.

Synchrony did not administer an IQ test. It did, however, test claimant's executive functioning¹⁰ and memory. In both these areas, claimant exhibited moderate to severe impairment. Based on testing done by the University of California, San Francisco Department of Neurology, Memory and Aging Center over the last several years, Synchrony found a "consistent pattern of gradual deterioration of these cognitive domains."

22. Synchrony conducted a multi-axial evaluation of claimant. Pursuant to the DSM-IV-TR, there are five axes on such an evaluation: Axis I, for diagnoses relating to

⁸ Claimant incorrectly answered that 27-9 was 15 and that 5x7 was 30.

⁹ The Synchrony assessment was conducted by Brac Selph, MA, a Psychology Intern, under the supervision of Edwyn Ortiz-Nance, Psy.D., a Supervising/Clinical Psychologist.

¹⁰ The Synchrony report defines "executive functions" as higher order cognitive processes, including initiation, planning, hypothesis generation, flexibility in thinking, decision-making, self-regulation, judgment, the ability to shift between conceptual sets (attend to two or more aspects of the environment simultaneously and shift from one to another), and feedback utilization.

clinical disorders and other conditions that may be a focus of clinical attention; Axis II, for diagnoses relating to personality disorders and mental retardation; Axis III, for general medical conditions; Axis IV, for psychosocial and environmental problems; and Axis V, for a Global Assessment of Functioning (GAF).

On Axis I, Synchrony diagnosed claimant with a mood disorder due to Huntington's Disease, with depressive features and anxious mannerisms. On Axis II, Synchrony stated that its diagnosis was "none." On Axis III, Synchrony diagnosed Huntington's Disease. On Axis IV, Synchrony diagnosed claimant with problems with access to health care services and a primary support group. On Axis V, Synchrony gave claimant a GAF of 39.¹¹

23. Dr. Roberts explained that the cognitive deficits that claimant is experiencing are caused by dementia that is brought on by Huntington's Disease. Dementia from the disease results from the gradual degeneration of the parts of the brain that control concentration, selection, multi-tasking, judgment and memory. As set forth in the DSM-IV-TR, difficulties with memory retrieval, executive functioning, and judgment are common early in the course of Huntington's Disease; more severe memory deficits occur as the disease progresses. (DSM-IV-TR, section 294.1x Dementia Due to Huntington's Disease, p. 165.)¹²

24. Dr. Roberts asserted that the deficits caused by the dementia brought on by Huntington's Disease were similar to those caused by mental retardation. Dr. Roberts agreed, however, that mental retardation causes more global intellectual deficits, while Huntington's Disease impacts certain discrete brain functions. Dr. Roberts asserted, however, that claimant's cognitive deficits were adversely impacting her ability to adapt in a manner similar to individuals with mental retardation.

25. Dr. Kawashima asserted that the dementia caused by Huntington's Disease is different from mental retardation. According to Dr. Kawashima, claimant's dementia is the result of an organic brain disease that is causing an irrecoverable deterioration in her mental state; conversely, mental retardation is the result of deficient mental development.

26. Carol Sharp, CVRC's Staff Psychologist, supported Dr. Kawashima's assertions. As Dr. Sharp explained, the DSM-IV-TR sets forth the following criteria for mental retardation:

¹¹ The GAF Scale provides that a GAF score between 31 and 40 denotes "**Some impairment in reality testing or communication** (e.g., speech is at times illogical, obscure, or irrelevant) **OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood** (e.g., depressed man avoids friends, neglects family and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school)." (Bolding and capitalization in original.)

¹² According to the DSM-IV-TR, a "diagnosis of dementia requires that the memory impairment and other cognitive deficits represent a significant decline from a previously higher level of functioning." The DSM-IV-TR also states that some cases of mental retardation "have their onset after a period of normal functioning and may qualify for the additional diagnosis of dementia." (DSM-IV-TR, p. 47)

- A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning).
- B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- C. The onset is before age 18 years. (DSM-IV-TR, p. 49.)

According to Dr. Sharp, because an individual with mental retardation may score higher than 70 on any given testing day, the fifth category was created to cover this variability in IQ testing. The higher an individual's IQ score, the greater his or her adaptive deficits must be in order to be eligible under the fifth category. In addition, in order to fall within the fifth category, any deficits that an individual may have in adaptive functioning must be related to his or her cognitive limitations; the individual's deficits cannot be caused by physical or psychological conditions.

There was no evidence presented to show that claimant has an IQ under or near 70. Dr. Sharp asserted that the fact that Synchrony made no diagnosis under Axis II shows that claimant does not have mental retardation or a condition similar to mental retardation. According to Dr. Sharp, if claimant had mental retardation or borderline intellectual functioning, it should have been identified by Synchrony under Axis II.

Dr. Sharp explained that claimant's dementia is caused by the deterioration of her frontal lobe, which is the center of executive functioning, and that an individual may have deficits in executive functioning without having the global cognitive deficits associated with mental retardation or conditions similar to mental retardation. Dr. Sharp opined that while claimant may have executive functioning deficits, she does not have mental retardation or a similar condition.

27. Dr. Sharp's explanation of fifth category eligibility is consistent with the "Association of Regional Center Agencies Guidelines for Determining '5th Category' Eligibility for the California Regional Centers" (ARCA Guidelines), which were approved by the ARCA Board of Directors on March 16, 2002. The ARCA Guidelines, in relevant part, provide that under the fifth category, an individual will be considered to be functioning in a manner similar to a person with mental retardation if:

A. The general intellectual functioning is in the low borderline range of intelligence (I.Q. scores ranging from 70-74). Factors that the eligibility team should consider include:

1. Cognitive skills as defined in the California Code of Regulations, Title 17, Section 54002: "...the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience."
2. The higher an individual's IQ is above 70, then the less similar to a person with mental retardation is the individual likely to appear. For example, an individual with an IQ of 79 is more similar to a person with low average intelligence and more dissimilar to a person with mild mental retardation.
3. As an individual's intelligence quotient rises above 70, it becomes increasingly essential for the eligibility team to demonstrate that:
 - a. there are substantial adaptive deficits, and
 - b. such substantial adaptive deficits are clearly related to cognitive limitations.

[¶]...[¶]

B. In addition to sub-average intellectual functioning the person also must demonstrate significant deficits in *Adaptive* skills including, but not limited to, communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. Factors that the eligibility team should consider:

[¶]...[¶]

2. Adaptive deficits are skill deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgment.
3. Skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation, substance abuse, or limited

experience. (Capitalization and bolding in original.)

Although claimant has dementia and physical and psychological disabilities due to her Huntington's Disease, she did not present sufficient evidence to show that she has an IQ that is either in the mental retardation or low borderline range of intelligence. In addition, claimant did not present sufficient evidence to show that she has adaptive deficits due to sub-average intellectual functioning. In sum, although claimant's Huntington's Disease is a debilitating disorder, claimant did not show that she currently has a disabling condition closely related to mental retardation.

28. Gross argued that, even if claimant's Huntington's Disease is not found to be a disabling condition similar to mental retardation, claimant still requires treatment similar to that required by individuals with mental retardation. Gross asserted that claimant does not require rehabilitation services; instead, she needs supervision, direction, supportive assistance, and meal preparation. According to Gross, claimant would benefit from these types of habilitation services to increase the quality of her life. For examples, Gross would like to see claimant participate in the dance programs and obtain the creative center services that CVRC provides to its clients. Gross would also like claimant to be in a vendorized home setting where there are clients closer to claimant's age so that she would not feel so isolated.

Dr. Roberts explained that claimant would benefit from a treatment program that utilized a team approach to evaluate her motor disabilities, cognitive functions, and adaptive needs; to monitor her psychological issues; and to provide integrated treatment strategies that addressed all these areas. He asserted that this sort of treatment program is similar to that required for individuals with mental retardation.

29. Relying upon the ARCA Guidelines, Dr. Sharp explained that the treatment provided to individuals with mental retardation is different from that required by persons with Huntington's Disease. The ARCA Guidelines, in relevant part, provide:

In determining whether an individual requires "treatment similar to that required for mentally retarded individuals," the team should consider *the nature of training and intervention* that is most appropriate for the individual who has global cognitive deficits. The eligibility team should consider the following to determine whether the individual requires treatment similar to that required by an individual who has mental retardation.

[¶]...[¶]

- C. Persons requiring *habilitation* may be eligible, but persons primarily requiring *rehabilitation* are not typically eligible as the term rehabilitation implies

recovery of previously acquired skills; however, persons requiring rehabilitation may be eligible if the disability is acquired before age 18 and is a result of traumatic brain injury or disease.

- D. Individuals who require *long term training* with steps broken down into small, discrete units taught through repetition may be eligible.
- E. The eligibility team may consider the intensity and type of *educational supports* needed to assist children with learning. Generally, children with mental retardation need more supports, with modifications across many skill areas. (Italics in original.)

Dr. Sharp explained that individuals with mental retardation need habilitation treatment that breaks down training and instructions into small steps and simple language to help them develop adaptive living skills. According to Dr. Sharp, because Huntington's Disease is a continually deteriorative disease, individuals with the disease do not require the same type habilitative treatment required by individuals with mental retardation. While claimant might benefit from many of the *services* provided by CVRC to individuals with mental retardation, the *treatment* she requires is different from that required by mentally retarded individuals.

30. The services that claimant is seeking from CVRC do not involve the types of treatment provided to individuals with mental retardation to help them develop on-going adaptive living skills. Instead, the focus of the services that claimant seeks is to improve the current quality of her life and to help her cope with the progressively deteriorating effects of her disease. In sum, claimant did not present sufficient evidence to show that she currently requires treatment similar to that required by individuals with mental retardation.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, regional centers provide services to individuals with developmental disabilities. Welfare and Institutions Code section 4215, subdivision (a) defines a "developmental disability" to be:

a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions

found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. California Code of Regulations, title 17, section 54000 further defines the term "developmental disability" as follows:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a

neurological impairment that results in a need for treatment similar to that required for mental retardation.

3. In order for claimant to establish eligibility for services under the Lanterman Act, she must show that her disability "originated" before she was 18 years old. Relying upon the recommendation of the ARCA Physicians, CVRC contends that for claimant to meet this requirement, she must show that she was "substantially disabled" before she reached the age of 18. CVRC's assertion is not persuasive.

CVRC argues that the Fourth District Court of Appeal in *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119 gave regional center professionals broad discretion in defining the terms used in the Lanterman Act. In *Mason*, the court found that the Lanterman Act and implementing regulations did not "provide a detailed definition of 'developmental disability' so as to allow greater deference to the [regional center] professionals in determining who should qualify as developmentally disabled and to allow some flexibility in determining eligibility so as not to rule out eligibility of individuals with unanticipated conditions, who might need services." (*Id.* at p. 1129.) While the *Mason* court granted deference to regional center professionals to determine who may have a "developmental disability" as used in Welfare and Institutions Code section 4512, subdivision (a), it did not address the scope of the term "originates" or grant similar deference to regional center professionals with respect to the interpretation of that term.

When interpreting a term in a statute, the starting point is the language of the statute itself; if that language is clear and unambiguous, a trier of fact should not indulge in an effort to "interpret" it. (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 73.) The Merriam-Webster Online Dictionary defines "originate" to mean "to give rise to: initiate" and "to take or have origin: begin."¹³ In light of the findings set forth in Findings 6-12, given the plain meaning of the term "originate," claimant's Huntington's Disease "originated" before she was 18 years old.

CVRC did not submit any legal authority or legislative history to show that the legislature intended to give the term "originates" the very narrow definition the ARCA Physicians have recommended. CVRC also did not show that either the Department of Developmental Services or the regional centers have adopted the definition that the ARCA Physicians have recommended. In the absence of more evidence to indicate that it was the intent of the legislature, the Department of Developmental Services and the regional centers to adopt the narrow definition of "originates" recommended by the ARCA Physicians, that narrower definition will not be applied in this case.

4. While claimant may have submitted sufficient evidence to show that her Huntington's Disease originated before she was 18 years old, she did not submit sufficient evidence to establish that, as a result of her disease, she currently has a "developmental disability" as that term is defined in the Lanterman Act and implementing regulations. Under

¹³ This definition can be found online at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=originate&x=19&y=17>.

the Lanterman Act, the legislature has authorized regional centers to provide services *only* to those individuals who have developmental disabilities that fall into one of the five distinct categories listed in Welfare and Institutions Code section 4512, subdivision (a): (1) mental retardation; (2) cerebral palsy; (3) epilepsy; (4) autism; or (5) disabling conditions that are closely related to mental retardation or require treatment similar to that required for individuals with mental retardation.

5. Claimant asserts that, as a result of her Huntington's Disease, she is eligible under the fifth category because she has a disabling condition that is closely related to mental retardation and requires treatment similar to that required for individuals with mental retardation. In *Mason*, the court found that, in order to be eligible for services under the fifth category, an applicant must show that he or she has a condition that is

very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well. (*Mason*, *supra*, 89 Cal.App.4th at p. 1129.)

As set forth in Finding 27, claimant did not show that she currently has a disabling condition closely related to mental retardation. As set forth in Findings 29 and 30, claimant did not show that she currently has a disabling condition that requires treatment similar to that required for individuals with mental retardation.

6. Claimant argues that she should be deemed eligible for services in light of the *Mason* court's recognition that regional centers have the flexibility to grant eligibility under the fifth category to individuals with "unanticipated conditions." (*Mason*, *supra*, 89 Cal.App.4th at p. 1129.) Huntington's Disease cannot be deemed to be an "unanticipated condition" as that phrase was used by the court in *Mason*. The legislature made the determination that only individuals with certain specified types of disabling conditions would be eligible for services under the Lanterman Act. The legislature chose not to grant services to individuals who may have other types of disabling conditions, including Huntington's Disease, if they cannot show that they fall within one of the five categories delineated in the act. Although the result may seem harsh, particularly for individuals with conditions as debilitating as claimant's, the legislature did not grant regional centers the authority to provide services to individuals whose disabilities fall outside the five specified categories. Because claimant did not show that she currently has a disabling condition that is closely related to mental retardation or requires treatment similar to that required for individuals with mental retardation, she did not establish that she is eligible for services under the Lanterman Act at this time.

ORDER

The appeal of K.B. for eligibility for services under the Lanterman Act from the Central Valley Regional Center is DENIED. The Notice of Proposed Action denying eligibility is AFFIRMED.

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days after receiving notice of this final decision.

DATED: March 22, 2006

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings